

REMARKS/ARGUMENTS

Of pending claims 1-94, claims 1-5, 8, 10, 45, 48 were rejected and the remaining claims 6, 7, 9, 11-44, 46, 47, 49-94 were withdrawn pursuant to a restriction requirement. The claims have been amended as noted above. Reexamination and reconsideration of the claims are respectfully requested.

Claims 1-4, 8, 10, 45, 48 were rejected under 35 U.S.C. 102(e) as being anticipated by Lary in US 2002/0082592.

Claim 1 has been amended to specify that the dissection tool comprises a radially expansive element circumferentially surrounding the catheter body and a cutting surface extending along the radially expansive element. In contrast, Lary describes a device which includes a cutting member 32 which is described and shown (Figs. 3, 6, 8, 9A-9G) to extend generally axially along a portion of catheter 22 rather than circumferentially surrounding the body of catheter 22. In addition, claim 1 of the instant application describes the cutting surface positioned a distance radially outwardly from the radially expansive element so that the cutting surface traverses the inner layer to the outer layer without penetrating the outer layer upon expansion of the element. In contrast, Lary describes the depth of the cutting member 32 to be important to the Lary device and should be just enough to transect the entire arterial wall, after dilation, including the adventitia (page 4, paragraph 46). Thus, the Lary device is described to be sized to transect all of the layers, rather than traversing an inner layer to an outer layer without penetrating the outer layer. For at least these reasons, Applicants believe claim 1 is allowable along with the claims which depend therefrom.

Claim 48 has been amended to specify a dissection means disposed near the distal end of the catheter body for traversing the inner layer to the outer layer without penetrating the outer layer to expose a portion of the outer layer. As stated above, the Lary device is described to be sized to transect all of the layers, rather than traversing an inner layer to an outer layer without penetrating the outer layer. Thus, for at least this reason, Applicants believe claim 48 is allowable.

Claims 1-5, 8, 10, 45, 48 were rejected under 35 U.S.C. 102(b) as being anticipated by Lemelson in US Patent No. 5,728,123.

As stated above, claim 1 has been amended to specify that the dissection tool comprises a radially expansive element circumferentially surrounding the catheter body and a cutting surface extending along the radially expansive element. In contrast, Lemelson '123 describes a device which includes one or more cutting blades 18 which are described and shown (Figs. 1A-1B, 2A-2B, 3) to extend generally axially along a portion of tubular structure 10 rather than circumferentially surrounding the body of structure 10. In addition, claim 1 of the instant application describes the cutting surface to be positioned a distance radially outwardly from the radially expansive element so that the cutting surface traverses the inner layer to the outer layer without penetrating the outer layer upon expansion of the element. In contrast, the Lemelson device is described to be used for atherectomy and the blades are described to be used to cut plaque from the artery walls (col. 4, line 12). There is no indication that the blades 18 are sized to cut material beyond plaque within artery walls, particularly to traverse an inner layer of a body lumen or cavity to an outer layer of the body lumen or cavity without penetrating the outer layer. For at least these reasons, Applicants believe claim 1 is allowable along the claims which depend therefrom.

Claim 48 has been amended to specify a dissection means disposed near the distal end of the catheter body for traversing the inner layer to the outer layer without penetrating the outer layer to expose a portion of the outer layer. As stated above, the Lemelson device is described to be used to cut plaque from artery walls. There is no indication that the blades cut material beyond plaque within artery walls. Thus, for at least this reason, Applicants believe claim 48 is allowable.

In addition, the Examiner considered phrases in claims 1, 2, 4, 8, 45, 48 to be functional language which do not define any structure. Although Applicants disagree with the Examiner, claims 1, 2, 8 have been amended to this end. Claims 4 and 45 have been canceled. Claim 48 includes means plus function language wherein functional language is inherent to the claim.

Claim 5 was rejected under 35 U.S.C. 103(a) as being unpatentable over Lary in US2002/0082592.

Claim 5 depends from claim 1 which has been differentiated from Lary for the reasons stated above. Therefore, Applicants believe claim 5 is allowable.

ADDED CLAIMS

Claims 71-73 have been added to more fully describe the claimed invention. Claims 71-73 depend from claim 1 and are considered allowable for the reasons stated above in relation to claim 1. No new matter has been added.

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PATENT

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,


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